

April 30, 1951 (OPINION)

RESIDENCE

RE: Old Age Assistance

Yours of the 24th inst. in the above matter has been referred to my desk.

This matter relates to the legal residence of Bertha Locken, of Northwood, North Dakota. The facts as stated to us are as follows:

"Mrs. Bertha Locken is residing at Northwood, North Dakota and has recently talked with the rural caseworker regarding old age assistance. Mrs. Locken is the legal wife of Carl Locken who, we believe, is receiving old age assistance at the present time in Minot, North Dakota. Mrs. Locken told the worker that she has been separated from her husband for the past 30 years, but that this is merely a separation and that they have never obtained a divorce. According to Mrs. Locken, her husband simply walked out on her and left her with two children to support. Mrs. Locken is living in a home in Northwood, in the county of Grand Forks, in a home which formerly was owned by herself and her husband. During the past few years, Mrs. Locken has supported herself by taking in laundry, but at the present time poor health and her advanced age are preventing her from making a living. Mrs. Locken has never lived in Ward County."

We must suppose that her husband, Carl Locken, never has, during the 30 years since his abandonment of his wife, Bertha, and their two children, provided another home for his family and has done nothing in the way of providing for their support.

Upon these facts, we are to determine the legal residence of Bertha Locken for poor relief purposes. The statutes bearing upon the question are the following:

"14-0702. The husband is the head of the family. He may choose any reasonable place or mode of living and the wife must conform thereto."

"14-0506 (8). A husband may choose any reasonable place or mode of living and if the wife does not conform thereto it is desertion."

"50-0201. The residence of a married woman for the purpose of this title follows that of her husband if he has any within or without the state . . ."

"50-0704. The question as to the residence of an applicant for old age assistance under the provisions of this chapter shall be determined by the rules and regulations prescribed in sections 50-0201 to 50-0207, inclusive. . . "

It is evident that these statutory rules were adopted to be applied to the ordinary relations between husband and wife. So long as the normal family relations subsist, these rules apply. But certainly circumstances may arise which make them clearly inapplicable. A husband may decide to remove from his established home and locate with his family elsewhere. If he provides a reasonably suitable home in his new location, it is the duty of his wife to live in the new home, and, if he remains there and establishes his residence in the new location, then such residence is also that of the wife. In the matter before us, we have no evidence of a new home being established for the family and a refusal of the wife to follow him. Corpus Juris Secundum states the rule thus: A husband, by his misconduct or abandonment, may lose the right to choose the residence of the family, citing: Rademacher v. Rademacher, 61 Idaho, 201, 100 P. 2d 955, and Stephens v. Stephens, 53 Idaho, 24 P. 2d 52.

We are of the opinion that, by his abandonment of the family and his neglect to establish a new and suitable home for them, he lost all right to govern the residence of the wife or children. C. J. S. states another rule which we believe is decisive here, as follows: The domicile of a married man is generally presumed to be at the place where his wife or family reside, provided the family residence is a permanent home. 28 C.J.S.36. Sec. 16.

Since the wife has continued to reside in the family home for thirty years, has raised the children and provided for them there, and she still resides there, this home would seem to be a permanent home under the foregoing rule. The husband is now shown to have never established a home. The law would hardly hold that the residence of the wife followed the peripatetic wanderings of the husband, who had abandoned her and his children. Therefore, it is our opinion that the legal residence of Bertha Locken for poor relief, or old age assistance, is in Grand Forks County. Such is our opinion unless the facts are shown to be seriously at variance with the foregoing statement.

ELMO T. CHRISTIANSON

Attorney General